

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT FRANCIS VERMETT,

Petitioner,

v.

GREGORY MCQUIGGAN,

Respondent.

Case No. 11-cv-13430

HONORABLE LAWRENCE P. ZATKOFF

**OPINION AND ORDER TRANSFERRING CASE TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Petitioner Robert Francis Vermett, presently confined at the Chippewa Correctional Facility in Kincheloe, Michigan, has filed a petition for a writ of habeas corpus. The Court determines that this is a successive habeas corpus petition and, therefore, orders it transferred to the United States Court of Appeals for the Sixth Circuit, pursuant to 28 U.S.C. § 2244(b)(3)(A).

Petitioner challenges his 1994 jury convictions for first degree murder and possession of a firearm during the commission of a felony, entered in Recorder's Court for the City of Detroit. Petitioner challenged the same convictions in a prior petition. That petition was denied on the merits. *See Vermett v. Adams*, No. 01-71755 (E.D. Mich. Sept. 9, 2003) (order adopting Magistrate Judge's Report and Recommendation dated June 27, 2003).

Before a prisoner may file a habeas petition challenging a conviction already challenged in a prior habeas petition, the prisoner must "move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). Petitioner's prior habeas petition was denied on the merits. Petitioner has not obtained from the Court of Appeals for the Sixth Circuit authorization to file a successive petition in this court. The Sixth Circuit has held that when a second or successive petition for habeas corpus relief is filed in the

district court without prior authorization, the district court must transfer the petition to the Court of Appeals pursuant to 28 U.S.C. § 1631. *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

Accordingly, the Court **ORDERS** the Clerk of Court to transfer this case to the United States Court of Appeals.

s/Lawrence P. Zatkoff

LAWRENCE P. ZATKOFF

UNITED STATES DISTRICT JUDGE

Dated: August 24, 2011

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on August 24, 2011.

s/Marie E. Verlinde

Case Manager

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